

**Domestic Violence:
Assessing the Risk & Supporting the Victim**

December 13, 2016

Phoenix, Arizona



**RISK ASSESSMENTS: FROM
RESEARCH TO PRACTICAL TOOLS**

Presented by:

DR. NEIL WEBSDALE

Director, Family Violence Institute, NAU

ARIZONA PROSECUTING ATTORNEYS' ADVISORY COUNCIL

1951 West Camelback Road, Suite 202

Phoenix, Arizona 85015


ELIZABETH ORTIZ

EXECUTIVE DIRECTOR




Risk Assessments

Neil Websdale



Presentation Overview

- 1. Legal/statutory considerations
- 2. The notion of risk in IPV cases
- 3. Pros and cons of RA tools
- 4. Limitations on use
- 5. What happens before an intimate partner femicide?
- 6. The Arizona Intimate Partner RA Instrument System (APRAIS)



Part 1: Legal/Statutory Considerations

- ARS 13-3967: Release on bailable offenses before trial, judicial officer shall consider:
- B3: Prior arrest or conviction for a serious offense or violent or aggravated felony
- Evidence accused poses a danger to others
- **The results of a RA or lethality assessment presented to the court**



U.S. Supreme Court on RA

- Barefoot v. Estelle (463 U.S. 880 (1983))
- Expert testimony on dangerousness may not always be correct
- Nevertheless, such testimony is admissible and ought be subject to the adversarial process
- Schall v. Martin, 467 U.S. 263 (1984) – upheld practice of preventive detention for juvenile criminal suspects based on a prediction of his/her risk of future dangerousness



State courts – varying views of RA

- **Pettingill v. Pettingill**, 480 S.W.3d 920 (KY 2015) – Kentucky Supreme Court upheld lower court decision to grant OP (order of protection) based partially on the appropriate employment of the judge's knowledge of risk markers
- **State v. Ketchner**, 339 P.3d 645 (AZ 2014) - limits a prosecutor's ability to utilize the information in a lethality assessment



State courts – varying views of RA

- **State v. Loomis**, 881 N.W.2d 749 (WI 2016) – Use of RA as a factor to be considered at sentencing does not violate defendant's due process rights
- RA cannot be used as the determinative factor in deciding whether an offender can be supervised safely and effectively in the community
- RA may not be used to determine whether to incarcerate an offender or the severity of the sentence

+ Part 2: The Notion of Risk in IPV Cases

- Risk of what – homicide, near-death, injury, severe assault?
- To whom? Female victim? Male victim? Children? Agency personnel?
- For how long? Timing? Resource allocation?
- Trend toward using RA in the courts

+ Risk v. Lethality Assessment

- Risk Assessment: evaluates degree of danger or threat of re-assault, severe re-assault, near-death, or death
- Lethality Assessment: evaluates likelihood of a killing
- Note remote chances of predicting DV death

+ Three Types of Risk Assessment

- Clinical (professional opinion only – shamanistic, problematic)
- Actuarial – integrates statistical markers
- Structured professional judgment (SPJ) – uses clinical and actuarial. OKA: Structured decision making (SDM)
- SPJ – Emphasis on evidence-based frameworks, consistency, but also flexibility with individual cases

+ Part 3: Pros and Cons of RA Tools

Pros

- Shared language of risk- informs CJS decisions regarding bail, conditions of release, supervision, sanctions, & treatment
- Public education and awareness-includes legal/social services
- Open-ended questions invite greater sharing of risk information? Potentially useful for judges/prosecutors.

+ Pros

- Evidence informed: We know much more about what happens before IPH with female victims
- Connecting victims and perpetrators with social services/safety planning (Caution: Services – Safety?)
- Relatively close correspondence between research on risk and the findings of DVFRTs

+ Pros

- Clusters of markers seem to matter, especially in homicides
- Ontario DVFRT - 75% of the cases reviewed from 2003-2012 had 7+ risk markers
- Caution: no matched control/referent group analysis with the Ontario research

+

Pros

- Initial evaluation of the LAP encouraging
- Messing et al., 2015- Non-equivalent groups quasi-experimental field trial using three groups
- LAP associated with an increase in protective actions and a decrease in the frequency and severity of violence among this sample of IPV survivors

+

Possible Pros (Balson, 2016)

- Effective use of RA data by prosecutors
- Decision to charge
- State assumes prosecution with a reluctant (e.g. recanting) victim
- In response to motions to modify release conditions
- In response to situations where victims want the perpetrator released from custody

+

Possible pros

- For impeachment at trial
- To aggravate a sentence
- Inform bail hearings
- For support in probation revocation and/or termination hearings
- RA helpful when prosecutor cannot reach victim

+

Possible limitations

- Note: Federal Rule of Evidence 404 – evidence of a person's character, and evidence of a crime, wrong, or other act is NOT admissible to prove that on a particular occasion the person acted in accordance with that character or trait
- Note exceptions – see Balson, 2016, 86

+

Cons

- Problematically chops the abusive relationship up into discrete risk markers/binaries
- E.g. Separation marker-process not binary
- Flat, one-off RAs v. longitudinal or rolling RAs
- CJ interventions v. others (housing, childcare, jobs, legal aid)
- IPH has a low base rate (rare) therefore v. difficult to predict

+

Cons

- Discoverability and notification thereof – discoverable open-ended questions may render victims more vulnerable
- Potential affronts to the dignity and autonomy of victims
- Tendency to present alarmist perspective to victims
- We see these characteristic risk factors in a significant proportion of cases where men murder women, versus
- We see these markers in x hundred thousand cases/year where women not re-victimized, killed, and so on

+

Cons

- We need research that tracks the outcomes of the alarmist v. more comprehensive choice presentations?
- Can victims give informed consent under duress or in crisis situations?
- Does the current nonchalance about giving RAs paternalistically conceive of victims as incompetent?
- Should victims give informed consent before completing a RA?

+

Part 4: Limitations on Use

- Time it takes – often a reason stated for not administering or considering. Note officer security
- Resource follow up. No point in using if inadequate advocacy follow up
- Not appropriate for male victims even though some police agencies ask men the questions. Reason: research only generated on female victims

+

Part 5: What happens before an IP femicide?

- Behavior/relationship dynamics
- Specific risk markers

+ Behaviors of Victims and Perpetrators

- Victim/Perpetrator binary problematic
- Haaken "stock scripts" - virtuous female protagonist and a one-dimensional male villain."
- Denial: lots of it. Victims ashamed and will hide abuse, especially the more grievous forms
- Minimization: Perpetrators minimize violence and its impact

+ Behaviors

- Appearance of Dishonesty: common. Recanting, requesting dismissal of charges, refusing to testify, testifying for batterers
- Possible reasons: complex trauma, confusion, befuddled thinking
- Witness intimidation: many ways, subtle, invisible in plain sight
- The appearance of complicity does not necessarily signify complicity

+ Behaviors

- Counterintuitive behavior of victims
- Victims won't necessarily report abuse, leave, cooperate with prosecution
- Fear of losing their children to CPS
- Hope for relationship
- Stigma of divorce
- Leaving not easy – safety, having confidence

+

Behaviors

- Her “indecisiveness” about leaving affected by all kinds of complexities:
- Losing her home, possessions, job, father for the kids, status as wife, a partner who she once loved, money, family/friends, pets, routines, things-known, children (?)
- Safety – leaving -dangerous, payoffs delayed
- Batterer remorse, begging for forgiveness, promising to change

+

Behaviors

- Batterers blame victims for negative outcomes
- Like others, batterers and victims complex people
- Taunting and potential provocation by victims?

+

Offender Behavior

- Situational couple violence (M. Johnson)
- Intimate terrorism and coercive control
- Relevance to RA (Hitting v. Battering)

+ Situational Couple Violence (SCV)

- Arises out particular situations
- No attempt to control
- Most common form of IPV
- Stress and anger release

+ Situational Couple Violence

- Serious injury including death possible
- Typically is less severe and fleeting
- Offenders immature, poor communicators, abuse drugs and alcohol, poor anger control
- Men and women commit similar amounts
- Social surveys find SCV not so much IT

+ Intimate Terrorism (IT)

- Perpetrator strategizes general control
- Originally called "Patriarchal Terrorism"
- PT implied violence rooted in patriarchal ownership, attitudes, traditions. Problematic
- Appears to be profoundly gendered

+

Intimate Terrorism

- Female intimate terrorists
- Johnson - IT roughly Men: Women = 90:10
- Abuser violent & controlling. Partner is not (Johnson)
- Reservations: recent research on control/aggression (Archer, 2000; Bates & Graham-Kevan, 2016)
- Many studies point too a link between women's violence and control motives (Bair-Merritt et al, 2010)

+

IT

- Regardless of the gender ratios of IT, most agree that women are more likely to receive serious injuries
- Women more likely to report depression, stress, and suicidal thoughts/attempts as a consequence of IPV than men
- Men less likely to report assaults by their partner (Felson & Pare, 2005)
- Dependent and antisocial types

+

Common Themes in IP Femicides: DVFR, Research, & Other Observations

- | | |
|---------------------------------------|---------------------------------|
| ■ Prior DV History | ■ Prior DV History |
| ■ Weapons use | ■ Rigid control |
| ■ Attempted choking (multiple/serial) | ■ Surveillance |
| ■ Forced sex | ■ Escalation |
| ■ Threats to kill (Attempts better) | ■ Twists |
| ■ Access to weapons | ■ Entrapment |
| ■ Stalking | ■ Is he capable of killing you? |

+

Pending/actual separation or emotional estrangement

Especially when batterer “highly controlling”
(Campbell et al, 03)

Ontario DVFRT (2008): actual or pending separation
found in 62 of 77 (81 Percent) intimate femicides

Generally threat associated with separation fades
First few days and up to 3 months appear critical

+

Obsessive possessiveness/morbid jealousy

- Extreme and homicidal possessiveness among perpetrators
- At some level he thinks/feels he owns her, particularly her reproductive capacities
- Is he violently and constantly jealous of you?
(Campbell et al, 03)

+

Depression and suicidal potential

- More pronounced in homicide suicides
(Rosenbaum - nine out of 12 cases of homicide-suicide but none in 24 cases of IPH)
- Ontario (2008) – perpetrator depressed (lay or professional) in 45 out of 77 cases (58%)
- Prior threats or attempts to commit suicide in 37 out of 77 (48%) – discerning question
- Has your partner ever threatened or tried suicide?



Alcohol and Drug Abuse

- Alcohol and drug abuse a correlate of DV
- Chronicity seems to be the key
- If he is feeding her habit (e.g. meth, heroin) very difficult for RA intervention to have any effect



Abuse during pregnancy

- Kicking or punching a pregnant partner
- Sexually assaulting a pregnant partner
- Attempting to induce a miscarriage
- Depriving a pregnant partner of sleep
- Denying or interfering with prenatal care
- The developing fetus experiences these abuses in utero



Stepchildren in the home

- Major risk marker for violence against wives
- More dangerous if it is her child from a previous relationship than his child
- Not one of the leading risk marker questions for intimate femicide
- Major risk marker for death of the child

+ Abuser's unemployment status

- Abuser's unemployment
- Meaning-explore link to shame and humiliation, compromised masculinity

+ Part 6: The Arizona Intimate Partner RA Instrument System (APRAIS)

- Danger Assessment – informed APRAIS questions
- Eleven-city case control study
- Compared 220 intimate femicide victims with a control group of 343 abused women
- Stylish landmark study
- Campbell et al., 2003

+ DA

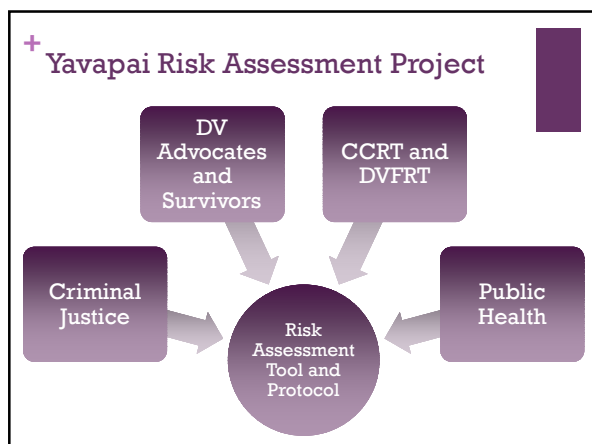
- Sought information from two potential proxy informants (identified from the case records such as police or medical examiner files) knowledgeable about the victim's relationship with the perpetrator
- Applied a 15-question DA tool
- Intimate femicide cases just under eight "Yes" responses

+ **DA**

- Among the 343 control group cases the average score was just over three
- 83 percent of women killed scored four or more yes responses
- Almost 40 percent of the women who were *not* killed also scored 4+ yes responses

+ **Community Origins of APRAIS**

- Arizona RA conferences (2012-2013)
- RA developments across the state (Glendale, Mesa, Tucson, Phoenix, Flag PDs)
- Yavapai: DVFRT + CCRT + other community input (CIRA)
- Devised questions & protocols in conjunction with agencies/stakeholders, especially LE, prosecution, public defender, advocacy, and judges



+ Research Roots of APRAIS

- Used extensive research to inform the development of the questions and protocols (Campbell et al., 2003; Snider et al., 2009; Messing et al., 2015)
- Focus of Yavapai and APRAIS: risk of severe re-assault or near lethal violence
- Danger Assessment – informed APRAIS questions
- Eleven-city case control study
- Compared 220 intimate femicide victims with a control group of 343 abused women
- Stylish landmark study
- Campbell et al., 2003

+ APRAIS GOALS

- Produce standardized & evidence-based RA tool and protocols for law enforcement & advocacy
- Create a shared language of risk to inform CJS decisions regarding bail, conditions of release, supervision, sanctions, & treatment
- Provide education to inform case handling and public awareness on a broader scale, e.g. public health screening
- Create an addendum to the Form 4 through which law enforcement can communicate IPV risk to the court
- Work with law enforcement regarding existing reporting mechanisms and possible long term realignment

+ CIRA Protocols

- Conduct the risk assessment after the on-scene investigation is completed
- CIRA intended for IPV only
- Questions are optional and asked of male and female victims
- To the alleged victim: we are assessing “potential danger”
- You have to make your own decisions
- To the alleged victim: RA discoverable



Protocols

- Two categories: risky (2 or 3 yes); high risk (4+)
- Risky and high risks triggers optional links with advocacy and a follow up by detectives
- The behavior/s you answered "yes" to have been present in very dangerous situations
- Victims in the "risky" group experienced a 6 times more elevated risk of severe re-assault or near lethal violence when compared to those with fewer than 2 risk factors present
- "High-risk" – 10.5x



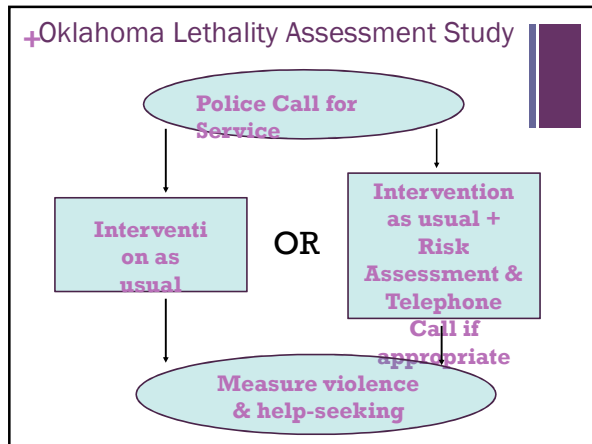
CIRA Protocols

- "No" answers do not signify no abuse! We saw this as an opportunity to perform a safety sweep to add another potential layer of protection
- Detective and Victim Support Personnel follow-up
- We cannot tell you your best course of action!



APRAIS Questions

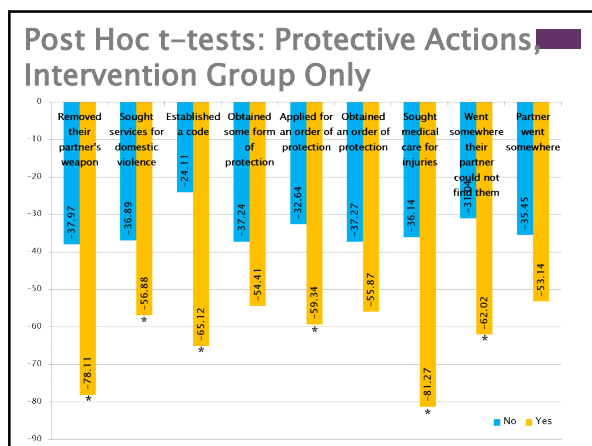
- Two tiers of questions
- Tier one – signal questions, best predictive power
- Tier two – inform law enforcement, prosecution, and advocacy about the cases without necessarily adding to predictive power
- Asked Dr. Messing to test these questions against the data from her Oklahoma Lethality Assessment Study



+Measures

Two structured telephone interviews conducted approximately 7 months apart. Participants were asked questions about:

- Their demographic and relationship information
- The violence that they had experienced (prior to interview #1, between interviews #1 & #2)
- Risk of homicide on the Danger Assessment
- Protective actions taken (prior to interview #1, immediately after the intervention, between interviews #1 & #2)



Community Informed Risk Assessment

Question	Yes	No	Decline
1. Has the physical violence increased in frequency or severity over the past six months? a. Alternate wording: Is the pushing, grabbing, hitting, or other violence happening more often?			
2. Is he/she violently and constantly jealous of you?			
3. Do you believe he/she is capable of killing you?			
4. Have you ever been beaten by him while you were pregnant ? (e.g. hit, kicked, shoved, pushed, thrown, or physically hurt with a weapon or object)			
5. Has he/she ever used a weapon or object to hurt or threaten you?			
6. Has he/she ever tried to kill you?			
7. Has he/she ever choked/strangled/suffocated you? If this has happened more than once , check here <input type="checkbox"/>			
Totals			

Community Informed Risk Assessment

Question	Yes	No	Decline
Has the physical violence increased in frequency or severity over the past six months? a. Alternate wording: Is the pushing, grabbing, hitting, or other violence happening more often?			
Is he/she violently and constantly jealous of you?			
Do you believe he/she is capable of killing you?			
Have you ever been beaten by him while you were pregnant ? (e.g. hit, kicked, shoved, pushed, thrown, or physically hurt with a weapon or object)			
Has he/she ever used a weapon or object to hurt or threaten you?			
Has he/she ever tried to kill you?			
Has he/she ever choked/strangled/suffocated you? If this has happened more than once , check here <input type="checkbox"/>			
Totals			

Professional Judgement

Tier 2: Ask on scene or during follow up.			
8. Does he/she control most or all of your daily activities?			
9. Is he/she known to carry or possess a gun ?			
10. Has he/she ever forced you to have sex when you did not wish to do so?			
11. Does he/she use illegal drugs or misuse prescription drugs ? (e.g. meth, cocaine, painkillers, etc.)			
12. Has he/she threatened to harm people you care about ?			
13. Did you end your relationship with him/her within the past six months? Does he/she know or sense you are planning on ending your relationship with him/her?			
14. Has he/she experienced significant financial loss in the last six months?			
15. Is he/she unemployed ?			
16. Has he/she ever threatened or tried to commit suicide ?			

+ Advocacy intervention

For all potentially available interventions, it is the victim's choice whether or not to accept offered assistance or information.

- If available, an advocate should join officers on-scene to provide support and information about local advocacy resources.
- If available, a local (or partner) advocacy organization should be called on the telephone for crisis intervention.
- If available and safe for the victim, telephone or in-person follow-up by a local advocate should be provided.
- If in-person or telephone advocacy services are not available on scene, police officers should provide a card with information about local, state and national resources.

+ Advocacy intervention

For all potentially available interventions, it is the victim's choice whether or not to accept offered assistance or information.

- If available, an advocate should join officers on-scene to provide support and information about local advocacy resources.
- If available, a local (or partner) advocacy organization should be called on the telephone for crisis intervention.
- If available and safe for the victim, telephone or in-person follow-up by a local advocate should be provided.
- If in-person or telephone advocacy services are not available on scene, police officers should provide a card with information about local, state and national resources.

+ Questions and contact information

- Dr. Neil Websdale
 - Neil.Websdale@nau.edu
 - 928-637-4810
